

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
ONONDAGA COUNTY DEPARTMENT OF	)	File Nos. 0000620271; 0000620276;
EMERGENCY COMMUNICATIONS	)	0000620282
	)	
Request for Waiver of Section 101.81 of the	)	
Commission's Rules	)	

**ORDER**

**Adopted: April 5, 2002**

**Released: April 9, 2002**

By the Acting Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. On October 9, 2001, the Onondaga County Department of Emergency Communications ("Onondaga" or "the County") filed requests for waiver of Section 101.81 of the Commission's Rules<sup>1</sup> to permit the authorization on a primary basis of two new 2 GHz Fixed Microwave Service (FMS) stations to replace the cancelled licenses of FMS Station WEH444, Cicero, New York and FMS Station WEH445, Baldwinsville, New York.<sup>2</sup> Onondaga concurrently filed an application to modify its license to operate FMS Station WEH448, Syracuse, New York with a similar waiver request.<sup>3</sup> For the reasons discussed below, we grant Onondaga's waiver requests.

**II. BACKGROUND**

2. The Commission has reallocated portions of the 2 GHz band from FMS to emerging technology (ET) services, including the personal communications services.<sup>4</sup> To this end, the Commission has adopted certain transition rules.<sup>5</sup> In doing so, the Commission balanced the needs of incumbent FMS licensees to continue operating their systems with the need to conserve vacant 2 GHz spectrum for use by ET licensees, to provide ET licensees with a stable environment in which to plan and implement new

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<sup>1</sup> 47 C.F.R. § 101.81.

<sup>2</sup> See FCC File Nos. 0000620271; 0000620276 (filed Oct. 9, 2001).

<sup>3</sup> See FCC File No. 0000620282 (filed Oct. 9, 2001).

<sup>4</sup> See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *First Report and Order and Third Notice of Proposed Rule Making*, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992) (*ET First Report and Order*).

<sup>5</sup> See 47 C.F.R. §§ 101.69-101.81. The rules are intended to accommodate the FMS licensees in a manner that would be most advantageous for the incumbent users, least disruptive to the public, and most conducive to the introduction of new services. See *ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5.

services, and to prevent ET licensees from bearing any additional costs of relocating FMS licensees.<sup>6</sup> Thus, rather than immediately clearing the 2 GHz band of the incumbent FMS users, the Commission permits the incumbents to continue to occupy the band on a co-primary basis with the ET licensees for a significant length of time, by the end of which the incumbents are to relocate to other spectrum.<sup>7</sup> ET licensees have the option, however, of requiring the FMS incumbents to relocate sooner if they pay the additional costs caused by the earlier relocation.<sup>8</sup> In addition, we authorize new FMS stations, extensions of existing FMS systems, and major modifications of existing FMS stations only on a secondary basis to ET systems.<sup>9</sup> Most minor modifications of FMS stations are also authorized on a secondary basis unless the licensee can demonstrate that it needs primary status and that the modifications will not add to the relocation costs to be paid by the ET licensee.<sup>10</sup> The result is that while incumbent FMS licensees are able to continue operating their current systems with primary status, any expansions and most modifications to the systems result in secondary status.

3. With a population of more than 450,000 residents and 100,000 travelers passing through its borders daily, Onondaga County encompasses 845 square miles of territory in upstate New York; it includes nineteen townships, fifteen incorporated villages, and the City of Syracuse.<sup>11</sup> For the safety of residents and travelers, Onondaga states that it maintains an emergency communications network that provides services to sixteen law enforcement agencies and sixty fire, ambulance, and other emergency medical personnel.<sup>12</sup> Since 1973, Onondaga's network has included a point-to-point microwave system.<sup>13</sup>

4. In 1996, when the Commission adopted the current regulations regarding the licensing of FMS systems in the 2 GHz band,<sup>14</sup> Onondaga County was an incumbent licensee in full operation of FMS Stations WEH444, WEH445, and WEH448. On September 4, 1999, the Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division (Division) mailed Onondaga

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<sup>6</sup> *ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5, 6891 ¶ 30; Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 95-157, 11 FCC Rcd 8825, 8867-69 ¶¶ 86-88 (1996) (*Cost Sharing First Report and Order*).

<sup>7</sup> See 47 C.F.R. §§ 101.69(b), 101.79(a); see also *ET First Report and Order*, 7 FCC Rcd at 6886 ¶ 5.

<sup>8</sup> See 47 C.F.R. §§ 101.69(a), 101.71-101.77.

<sup>9</sup> See 47 C.F.R. § 101.81. Secondary operations may not cause interference to operations authorized on a primary basis (e.g., the new ET licensees), and they are not protected from interference from primary operations. See *Cost Sharing and First Report and Order*, 11 FCC Rcd at 8869 ¶ 89. Thus, an incumbent operating under a secondary authorization must cease operations if it poses an interference problem to an ET licensee. See *id.*

<sup>10</sup> See 47 C.F.R. § 101.81.

<sup>11</sup> See Letter from Stephen J. Wisely, Commissioner, Onondaga County, New York, to Ruth Taylor, FCC (dated Sept. 10, 2001) ("STA Request").

<sup>12</sup> See *id.*

<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., *Cost Sharing First Report and Order*, 11 FCC Rcd at 8867-69 ¶¶ 86-89; see also 47 C.F.R. § 101.81. These rules went into effect on August 1, 1996. See 61 Fed. Reg. 29679, 29680, 29695 (1996).

County separate reminders to renew the licenses for Stations WEH444 and WEH445.<sup>15</sup> In a letter, dated September 10, 1999, Onondaga County responded that “Microwave License WPNC410 and WPNC411 were issued on 10/16/96 shortly after construction. Microwave License WEH444 and WEH445 were decommissioned and should no longer be licensed to Onondaga County. Please correct your records accordingly.”<sup>16</sup> The Branch therefore cancelled the licenses for FMS Stations WEH444 and WEH445 on September 15, 1999.<sup>17</sup>

5. On October 9, 2001, Onondaga filed the three captioned applications and associated requests for waiver of Section 101.81 of the Commission’s Rules.<sup>18</sup> The County states that in 1996 it released frequencies to Sprint PCS and acquired new 6 GHz stations (WPNC410 and WPNC411). In this connection, the County explains that the 1999 cancellation request was based on a mistaken belief that Stations WEH444 and WEH445 covered frequencies that were released to Sprint PCS and/or superseded by Stations WPNC410 and WPNC411.<sup>19</sup>

### III. DISCUSSION

6. Pursuant to Section 1.925 of the Commission’s Rules,<sup>20</sup> we may grant a waiver if it is shown that either (1) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>21</sup> For the reasons discussed below, we find that the circumstances presented by Onondaga County warrant granting its requests for waiver of Section 101.81 of the Commission’s Rule.

7. We conclude that Onondaga County has demonstrated that, under the unusual circumstances presented, application of the rule would be inequitable and contrary to the public interest.<sup>22</sup> When reviewing the circumstances presented, we first note that, in 1999, Onondaga County responded

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<sup>15</sup> Stations WEH444 and WEH445 each carried an expiration date of November 10, 1999. The current license term for Station WEH448 expires on May 8, 2002.

<sup>16</sup> Letter from John P. Shea, Commissioner, Onondaga County, New York, to Michael Hayden, Microwave Branch, FCC (dated Sept. 10, 1999) (“Cancellation Letter”).

<sup>17</sup> Onondaga County received special temporary authority (STA) to operate on the subject frequencies of cancelled FMS Stations WEH444 and WEH445 on October 4, 2001. *See* License for Station WPTH811, FCC File. No. 0000597942 (granted Oct. 4, 2001); License for Station WPTH812, FCC File. No. 0000592293 (granted Oct. 4, 2001). Prior to applying for STA, Onondaga County apparently continued to operate FMS Stations WEH444 and WEH445 without authorization. *See, e.g.*, STA Request at 1-3.

<sup>18</sup> 47 C.F.R. § 101.81.

<sup>19</sup> *See* STA Request at 2.

<sup>20</sup> 47 C.F.R. § 1.925(b)(3).

<sup>21</sup> *See id.*

<sup>22</sup> *See* 47 C.F.R. § 1.925(b)(3)(ii).

within days of receiving the Commission's reminders to renew FMS Stations WEH444 and WEH445.<sup>23</sup> Next, we find it to be of particular relevance that an Onondaga County Commissioner requested the cancellation of the licenses for the 2 GHz FMS Stations WEH444 and WEH445 upon the mistaken assumptions that they were no longer in use and that two other 6 GHz microwave stations were meant to supersede and replace them.<sup>24</sup> However, Stations WEH444 and WEH445 are an integral part of a four-station 2 GHz network that has been operated by Onondaga County since the 1980s.<sup>25</sup> Onondaga County could not have intended to cancel the subject licenses because such an action "effectively voids the ability to send and receive information from the top northern position of the County."<sup>26</sup>

8. Under such circumstances, we find that application of Section 101.81 would be inequitable and contrary to the public interest.<sup>27</sup> Absent a waiver, Section 101.81 would only permit authorization for Onondaga County to operate any new or substantially modified 2 GHz FMS station on a secondary basis to ET users.<sup>28</sup> However, Onondaga County's 2 GHz FMS stations are at the "heart" of a public safety communications network that police, fire, and other emergency services rely on to protect the health and safety of 450,000 residents and 100,000 daily commuters in thirty-four towns and villages and the City of Syracuse.<sup>29</sup> Moreover, according to Onondaga County, its 2 GHz FMS system is fully loaded "to its licensed and designed capacity of 132-channels."<sup>30</sup> The imposition of secondary status on communications of this nature would therefore pose a risk of serious adverse consequences to the public.

9. Finally, on March 7, 2002, the Branch returned the captioned applications to Onondaga County for additional information because "some of the technical information requested in [Onondaga

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<sup>23</sup> Cf., e.g., County of Stanislaus, *Order*, 16 FCC Rcd 21,956 (WTB PSPWD 2001) (denying request to authorize new 2 GHz FMS station with primary status when licensee inadvertently allowed license for station to expire). In this connection, we note Onondaga County's diligence in filing a response within a week of the Return Letters.

<sup>24</sup> See Medina Electric Cooperative, Inc., *Order on Reconsideration*, 14 FCC Rcd 17,843 (WTB PSPWD 1999) (*Medina*) (reinstating authorization to operate a 2 GHz FMS station with primary status). Upon receipt of a license renewal reminder, an employee of the licensee in *Medina* marked it as "void" and promptly returned it to the Commission. See *id.* at 17,844 ¶ 3. The license was therefore cancelled. See *id.* In granting the licensee's request to reinstate its authorization to operate the 2 GHz FMS station with primary status, we found it to be of "particular relevance" in *Medina* that the employee's actions were taken on the mistaken assumption that another call-sign replaced the cancelled license. *Id.* at 17,846 ¶ 6.

<sup>25</sup> Onondaga County also operates FMS Station WEH446, Syracuse, New York.

<sup>26</sup> STA Request at 2; cf. City of Henderson, Nevada, *Order*, 14 FCC Rcd 16156, 16159 ¶ 7 (WTB PSPWD 1999) (noting that the imposition of secondary status on one of a three-station 2 GHz FMS system would render public safety communications network useless); New York City Transit Authority, *Memorandum Opinion and Order*, 4 FCC Rcd 4488 (1988).

<sup>27</sup> Relative to the County's statement that it released frequencies to Sprint PCS in 1996, see para. 5 *supra*, it is notable that such action demonstrates compliance with the Commission's policy of reallocating the 2 GHz band from FMS to ET use. See generally *Medina*, 14 FCC Rcd at 17,846 ¶ 6.

<sup>28</sup> See 47 C.F.R. § 101.81.

<sup>29</sup> See STA Request at 1-3.

<sup>30</sup> *Id.* at 2.

County's] applications to re-license stations WEH444 and WEH445 differs from the parameters for which these stations were originally authorized.”<sup>31</sup> On March 13, 2002, Onondaga County amended its applications in response to the Return Letters.<sup>32</sup> Specifically, Onondaga County certifies that it is “not making any technical changes to the previously licensed and operating systems.”<sup>33</sup> Rather, Onondaga County explains that the changes noted in the Return Letters merely reflect data corrections.<sup>34</sup>

#### IV. CONCLUSION

10. For the reasons discussed above, we conclude that, under the unusual circumstances presented by Onondaga County, application of Section 101.81 of the Commissions' Rule in this matter would be inequitable and contrary to the public interest. We therefore grant Onondaga County's requests for waiver of Section 101.81 of the Commission's Rules and forward the applications to the Branch for processing in accordance with this decision and the applicable Commission Rules. We caution that such relief is not granted routinely and urge Onondaga County to ensure the accuracy of information filed with the Commission in the future.

#### V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925 and 101.81 of the Commission's Rules, 47 C.F.R. §§ 1.925, 101.81, the Requests for Waiver of Section 101.81 of the Commission's Rules filed by the Onondaga County Department of Emergency Communications on October 9, 2001 ARE GRANTED.

12. IT IS FURTHER ORDERED that the Licensing and Technical Analysis Branch SHALL PROCESS Onondaga County Department of Emergency Communications' pending applications, FCC File Nos. 0000620271, 0000620276, 0000620282 in accordance with this *Order* and the applicable Commission Rules.

13. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

#### FEDERAL COMMUNICATIONS COMMISSION

Barry J. Ohlson

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<sup>31</sup> Automated Letters from Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to David A. Stevenson, Dutch Hill Tower Antenna Systems, Inc. (Mar. 7, 2002) (“Return Letter”) (Mr. Stevenson is the designated contact of record for Onondaga County), FCC File Nos. 0000620271; 0000620276; 0000620282.

<sup>32</sup> See FCC File Nos. 0000620271; 0000620276; 0000620282 (filed Mar. 13, 2002).

<sup>33</sup> *Id.*, Attachment (Explanation Letter).

<sup>34</sup> See *id.*; but cf., e.g., Wisconsin Electric Power Company, *Order*, 16 FCC Rcd 22,440 (WTB PSPWD 2001) (denying request to authorize modified 2 GHz FMS station with primary status when requested location differed from the authorized location, *i.e.*, the incumbent/primary status location, due to licensee's unauthorized relocation of the FMS station in 1992).

Acting Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau